IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

_____ **WRIT PETITION No. 728 OF 1992**

M/s. Jamiyat Coop. Hsg.
Society through its Chairman. .Petitioner

Vs.

Smt. Rukminibai G. Bhoir & Ors. . ... Respondents

Mr. A. R. Shaikh, Advocate for the Petitioner.

Mr. N. V. Walawalkar, Advocate for Respondent No.1
to 5.

CORAM : D. G. DESHPANDE, J.

DATE : SEPTEMBER 19, 2006.

P.C.

. Heard the learned advocate for Petitioner and Mr. Walawalkar, Advocate for Respondent Nos. 1 to 5. Petitioners are the original plaintiff. Plaintiff had filed suit for specific performance of agreement dated 29-4-1974. Suit was decreed in favour of Petitioner by the Trial Court by its judgment dated 30-1-1988 directing the plaintiff to deposit the balance of the consideration in the Court within two months from the date of decree.

2. The plaintiff could not deposit the said amount within two months. However, they filed execution proceeding and filed an application for extension of time to deposit, meaning thereby they had to manage, since it can be in pursuance to the decree. The trial Court rejected the application, on the

ground that it has no powers to extend the period. On 19th April, 1991 the plaintiffs preferred an appeal against that order. That appeal was also rejected on 4-1-1992, and hence, this writ petition.

3. The question is whether not depositing amount within two months from the date of decree, can take away the right of the plaintiff, which he acquired after getting a decree for specific performance in his favour. Obviously, the answer has to be in the affirmative i.e. plaintiff's right stand extinguished. The obvious reason for this is that every decree can be executed within a period of twelve years. The time is fixed in the matters of specific performance only because of the urgency or exigency shown by the plaintiff, who is a willing purchaser. Fixing that time is not last word in the matter and that does not take away the right of the plaintiff. If no such direction is given, he can still execute the decree under the provisions of Code of Civil Procedure and the Limitation Act.

4. Apart from this, counsel for the Respondent Mr. Walawalkar contended that once the Court gives direction of specific nature i.e. giving certain time to the plaintiff to deposit the amount and those

directions are not fulfilled or complied with, then the plaintiff loses his right to claim specific performance and both the Courts below rightly rejected the contention of the plaintiff.

5. As against this, the counsel for the Petitioner relied upon two judgments of the Supreme Court. In **Yeshoda and another Vs. K. Nagarajan** [**(1996)11 Supreme Court Cases 228**] , wherein in similar situation, the trial Court rejected the application for extension of time for payment of amount and the High Court allowed the extension. Secondly, the Supreme Court in the circumstances held that Courts have powers under S. 148 of Civil Procedure Code to enlarge the time and therefore, the Court had correctly exercised the discretion.

6. In similar matter, in **Shobha Vilas Thakare Vs. Narendra T. Hulke & Ors.[2000(2) Mh.L.J. 471]**, a Single Bench of this Court after taking review of the judgments in the field found that even though the Respondents have defaulted in payment of consideration within the time fixed by the Court, the applicant did not take any steps under Sec. 28(1) of the Specific Relief Act for rescession of contract and then the executing Court has allowed the Respondent to deposit

the amount in the extended period, then no wrong was committed by the Court.

7. The Petitioner has already deposited the said amount in the said executing Court. Therefore, in the circumstances both the orders of the trial Court as well as appellate Court are set aside. Since the Petitioner has already deposited balance of consideration in the trial Court, the said deposit shall be treated as deposit, pursuant to the order of this Court and within the extended period upto the date of deposit. Further proceeding in the execution to continue.

8. Ad-interim relief in terms of prayer Clause (a) to continue till sale-deed is executed as per the original decree in favour of the Petitioner.

[D. G. DESHPANDE, J.]